

**AGREEMENT FOR THE PREPARATION OF AN ENVIRONMENTAL
ASSESSMENT AND ENVIRONMENTAL DOCUMENTS FOR SOUTH BAY
CARGILL SOLAR SALT POND PERMIT APPLICATION
(Revised February 4, 2004)**

The San Francisco Bay Conservation and Development Commission ("the Commission") and Cargill Salt, a business unit of Cargill, Incorporated ("Cargill") agree as follows:

WHEREAS, consistent with the San Francisco Bay Plan policies on Salt Ponds and Other Managed Wetlands Cargill conveyed approximately 16,000 acres of property and/or property rights to the State of California and the United States for habitat restoration; and

WHEREAS, Cargill continues to conduct salt making activities on a remaining, approximately 15,000 acres of property in the south San Francisco Bay area in Alameda, Santa Clara, and San Mateo Counties on which it produces salt from the evaporation of Bay water and the crystallization of salt; and

WHEREAS, Cargill is consolidating its solar salt making system to restrict its salt making activities to its remaining acreages and intends to continue to maintain, operate and make improvements to this consolidated salt making system; and

WHEREAS, California Government Code section 66632 requires a Commission permit for certain activities in and substantial changes in use of salt ponds, the Bay and a 100-foot shoreline band inland from the Bay, and pursuant to this authority Permit No. 4-93 has been issued and is in effect for the maintenance activities associated with the production of salt, as well as for the placement of many, but not all, system improvements; and

WHEREAS, Cargill now wishes to utilize existing or improved maintenance practices and activities for its ongoing activities, and accordingly desires to seek authorization to extend Permit No. 4-93 for a ten-year period for the maintenance of and improvements to its consolidated salt making system; and

WHEREAS, the maintenance and improvements to the consolidated salt making system may have significant effects on the environment in ponds and adjacent areas that are used by species and otherwise have important Bay related natural values and provide important habitat; and

WHEREAS, the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code Sections 21000 through 21176) provides that any state agency such as the Commission must give adequate consideration to environmental factors, including the preparation of an environmental impact report ("EIR") or, if the agency's program has been certified by the State Resources Agency as being "functionally equivalent," the agency must follow the regulations and procedures that have been so certified and if the state agency has determined that the proposed project is likely to have substantial environmental impacts, a document entitled "Environmental Assessment" that is functionally equivalent to an environmental impact report and must be prepared to accompany the application summary; and

WHEREAS, the Commission represents that it lacks the personnel and resources to prepare the needed environmental assessment and documents without the assistance from Cargill; and

WHEREAS, the California Environmental Quality Act, the implementing regulations and cases interpreting CEQA require that the Commission and its staff must be responsible for assuring that the environmental analysis and all documents will be complete, accurate, objective, and comply fully with the Commission's regulations and with CEQA; and

WHEREAS, Cargill and the Commission agree that by entering into this agreement, the Commission is in no way delegating any of its authority or responsibility for either preparing the environmental assessment and documents or its review of and final action on the application from Cargill.

THEREFORE, the Commission and Cargill now agree as follows:

I. Purpose

This agreement assures the resources for the preparation of a complete and objective environmental assessment and associated documents to be used by the Commission to evaluate the environmental impacts associated with the improvements to and maintenance of the salt ponds and levees in Cargill's consolidated salt making system. To obtain the necessary information Cargill shall hire and pay a consultant to prepare: (1) an administrative draft(s) of an environmental assessment; (2) the environmental assessment; and (3) a summary of comments received on the environmental assessment and written responses thereto. The use of a consultant will allow the Commission's staff to expedite administration and review of the environmental assessment and the Commission agrees to respond to requests for decisions and guidance within fifteen days.

II. Scope of Work

The consultant shall, under the direction of the Executive Director of the Commission ("Executive Director"), prepare: (1) an administrative draft(s) of an environmental assessment; (2) the environmental assessment; and (3) a summary of comments received on the environmental assessment and written responses thereto. The peer review process established pursuant to paragraph IX of this agreement shall provide for the review and submittal of written comments by the peer reviewers on the scope of work prepared by the consultant. The consultant and the Executive Director shall thereafter meet to discuss the proposed scope of work and the peer review and Cargill comments. Finally, the Executive Director shall develop a final scope of work based on the draft scope of work, the comments from the peer review process, and the meeting between the consultant and the Executive Director. The documents shall fully and objectively describe all environmental impacts, including adverse and beneficial impacts, associated with the maintenance of the Cargill South Bay salt ponds, and shall specifically address the impact to wildlife as a result of the activities contemplated in Cargill's permit extension, including the improvement to and maintenance of the consolidated salt making process. Specific concerns addressed shall include, but not be limited to: (1) the short and long term impacts of the proposed activities on tidal marsh and wildlife species that use or may use any of the affected habitat; (2) impact of the proposed activities on any animal or plant species; (3) impact of the proposed activities on water quality and beneficial uses of the Bay and; (4) the consistency of the proposed activities with the policies of the San Francisco Bay Plan and the provisions of the McAteer-Petris Act and the overall environmental benefit and detriment. The consultant shall conform all analyses and documents to the California Environmental Quality Act, implementing regulations, and the Commission's laws, policies, and regulations. At the request of the Executive Director, the consultant shall be available to meet either periodically or on a regular basis with staff, representatives from Cargill, representatives of staff of other agencies or others whom the Executive Director shall invite to provide information and respond to questions.

III. Term and Duration

This agreement shall be valid and binding until such time as either: (1) the Commission has completed its review of the environmental document(s) and taken final action on the associated permit application; or (2) Cargill withdraws its permit application.

IV. Selection of Consultant

No consultant shall be selected until the Executive Director agrees in writing that the proposed consultant is acceptable to the Commission and the proposed consultant has agreed to perform work in the manner described in this agreement and agrees to accept the direction of the Commission's staff. The Executive Director may accept a proposed consultant who demonstrates, to the Executive Director's satisfaction, knowledge and experience in the following areas: (1) general Bay environmental issues; (2) the Commission's laws and procedures; (3) the California Environmental Quality Act and the federal and state endangered species acts; (4) the salt making properties and their immediately adjacent properties; and (5) environmental issues related to maintenance of and future changes associated with the consolidated salt making process. Cargill shall provide information about a proposed consultant to the Executive Director with a request that the consultant be approved. The Executive Director shall respond within 10 days of receiving the request. If the Executive Director disapproves the proposed consultant, Cargill shall select another consultant for consideration. Once the Executive Director has agreed to a selection, the consultant shall agree in writing to comply with this agreement and the direction of the staff.

V. Duties of the Consultant

Under the direction of the Executive Director, the consultant shall be responsible for preparing all of the following: (1) an administrative draft(s) environmental assessment, as generally described by Commission regulations; (2) the environmental assessment; (3) a summary of comments received on the environmental assessment and written responses thereto; (4) such supporting documentation as the Executive Director indicates the Commission may need to respond to issues received either in writing or at the public hearing on the environmental assessment or the application; and (5) if the Commission determines that the environmental assessment is legally inadequate based on public comments, a revised environmental assessment. Prior to public release or review, any document shall first be submitted to the Executive Director with a request that it be reviewed and approved as meeting the requirements of the applicable laws and regulations, this agreement, and containing fair, complete, objective, and reliable information. If the Executive Director determines that modifications to the submitted document are necessary, the consultant shall revise the document in response to the instructions of the Executive Director and submit the revised document for review and approval. Only after the Executive Director has approved a document submitted by the consultant, shall the document be deemed to be the draft environmental assessment, the draft response to comments, or the final environmental assessment, respectively. The consultant shall indicate the source of any changes with which the consultant disagrees such that the reader may determine which material the consultant believes represents the consultant's best judgment and which material has been placed at the request of the Executive Director. Concerning the proposed text of the scope of work, the environmental assessment, and the responses to comments, any modifications to any drafts of final text proposed by Cargill shall be made to the Executive Director, not directly to the consultant. Cargill shall propose such changes, additions, or deletions, in writing to the Executive Director and such written statements shall become part of the record of the preparation of the environmental assessment.

VI. Duties of Cargill

Cargill shall be responsible for paying all consultant services and other associated charges. The Commission shall not be responsible in any way for any payments to the consultant. Cargill shall be responsible for the reproduction and distribution of documents in accordance with the instructions of the Executive Director. By entering this agreement and by applying for and/or accepting the permit contemplated herein, Cargill does not agree to or acquiesce in the assertion of jurisdiction by the Commission over the lands or activities that are the subject of this agreement and the permit. Cargill reserves the right to challenge or contest such jurisdictional assertions.

VII. Ownership and Control of Consultant Work Product

Upon submittal of any draft or final environmental document intended for public review, the Commission shall have complete ownership and control of such document(s), which shall be considered public documents available for review by any member of the public who satisfies the Commission's procedures for requesting review of public documents. The Commission shall also be free to use the documents and the information in them in any manner that it sees fit.

VIII. Responsibility for the Objectivity and Completeness of the Assessment

The Commission shall be responsible for and control the contents of any and all documents that are published as a result of this agreement, specifically including the environmental assessment; and the responses to comments. This responsibility shall include assuring that all information in and documents themselves are complete, accurate, objective, and unbiased, particularly in the identification of environmental benefits and losses, likely impacts, the alternatives for maintaining the salt ponds and the levees, and the discussion of mitigation measures and alternatives. In fulfilling this obligation, the Executive Director or the Commission shall have the complete and unconditional discretion to (consistent with applicable laws and regulations) modify in any way, to substitute, or to edit any and all of the material provided for public review. In the case that the consultant or Cargill disagrees with changes directed by the Commission or Executive Director to the content of any document, the Executive Director shall assure that the reader can ascertain what information is associated with the consultant, what information has been changed or added by the Commission or the Executive Director, and what information, if any, has been changed, added or deleted at the request of Cargill.

IX. Peer Review

The Executive Director, in consultation with Cargill, shall establish peer review of the environmental documents described herein by three to five volunteers. The Executive Director shall ultimately have the exclusive authority to select the peer reviewers and shall select individuals who have superior academic credentials, broad experience in their chosen field, demonstrated knowledge of environmental analysis and assessments, and who are willing to volunteer their time and agree to the terms and conditions of this agreement. He shall notify the selected individuals by letter and may dismiss individuals if he finds that their review is not complying with the terms of this agreement. Peer reviewers shall review those documents submitted by the Executive Director to them for review and provide written comments to the Executive Director concerning such submitted documents. Such written comments shall be provided within 15 days of the date of request. Documents expected to be submitted include: (1) the written scope of work; (2) draft(s) of the environmental assessment; (3) selected comments on the environmental assessment; and (4) the proposed changes in response to such comments. The Executive Director may also consult with the peer reviewers on issues raised during the assessment and may ask one or more of the reviewers to meet with the Executive Director and the selected consultant on an as needed basis. The original of all written material from each peer reviewer shall be part of the record of the assessment effort and be made available to the public as provided in the California Public Records Act.

X. Further Review and Amendments

Modifications to this agreement may be necessary. On behalf of the Commission, the Executive Director is authorized to make amendments or other minor modifications to this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as of ____ day of March in the year 2004.

San Francisco Bay Conservation
and Development Commission

By: _____

Name: _____

Title: _____

Cargill, Incorporated
Cargill Salt Business Unit

By: _____

Name: _____

Title: _____